

**UNITED STATES DISTRICT COURT**

***DISTRICT OF MAINE***

*LUANN ALLEY,*

*Plaintiff*

**v.**

**KENNETH S. APFEL,**  
*Commissioner of Social Security,*

*Defendant*

***Docket No. 00-5-B***

## REPORT AND RECOMMENDED DECISION<sup>1</sup>

This Social Security Disability (ASSD@) appeal raises the question whether the commissioner erred in concluding that as of the plaintiff's date last insured she did not suffer from severe depression. I recommend that the court vacate the commissioner's decision and remand for further proceedings.

In accordance with the commissioner's sequential evaluation process, 20 C.F.R. § 404.1520; *Goodermote v. Secretary of Health & Human Servs.*, 690 F.2d 5, 6 (1st Cir. 1982), the administrative law judge found, in relevant part, that the plaintiff remained insured for disability purposes only through March 31, 1992, Finding 1, Record p. 20; that her statements concerning her impairments and their impact on her ability to work at the time her insured status expired were not entirely credible, Finding 3, Record p. 20; that on March 31, 1992 she did not have any impairment that significantly limited her ability to perform basic

<sup>1</sup>This action is properly brought under 42 U.S.C. § 405(g). The commissioner has admitted that the plaintiff has exhausted her administrative remedies. The case is presented as a request for judicial review by this court pursuant to Local Rule 16.3(a)(2)(A), which requires the plaintiff to file an itemized statement of the specific errors upon which she seeks reversal of the commissioner's decision and to complete and file a fact sheet available at the Clerk's Office. Oral argument was held before me on June 16, 2000 pursuant to Local Rule 16.3(a)(2)(C) requiring the parties to set forth at oral argument their respective positions with citations to relevant statutes, regulations and case authority and page references to the administrative record.

work-related functions and therefore did not have a severe impairment, Finding 4, Record p. 20; and that she was not under a disability at any time through March 31, 1992, Finding 5, Record p. 20.<sup>2</sup> The Appeals Council declined to review the decision, Record pp. 6-7, making it the final determination of the commissioner, 20 C.F.R. ' 404.981; *Dupuis v. Secretary of Health & Human Servs.*, 869 F.2d 622, 623 (1st Cir. 1989).

The standard of review of the commissioner's decision is whether the determination made is supported by substantial evidence. 42 U.S.C. ' 405(g); *Manso-Pizarro v. Secretary of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In other words, the determination must be supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusions drawn. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Rodriguez v. Secretary of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981).

With respect to the plaintiff's SSD application, the administrative law judge reached Step 2 of the sequential evaluation process. Although a claimant bears the burden of proof at this step, it is a *de minimis* burden, designed to do no more than screen out groundless claims. *McDonald v. Secretary of Health & Human Servs.*, 795 F.2d 1118, 1123 (1st Cir. 1986). When a claimant produces evidence of an impairment, the commissioner may make a determination of non-disability at Step 2 only when the medical evidence establishes only a slight abnormality or combination of slight abnormalities which would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered.® *McDonald*, 795 F.2d at 1124 (quoting Social Security Ruling 85-28).

The plaintiff asserts that the administrative law judge failed to apply Social Security Ruling 83-20 to

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<sup>2</sup>The administrative law judge also determined that as of January 8, 1997 the plaintiff suffered from fibromyalgia, chronic low back pain and a tremor of the right hand, conditions that rendered her disabled as of that date. Findings 6-14, Record p. 21. The plaintiff hence was found eligible for Supplemental Security Income payments, which do not depend on insured status. *Id.* at 17, 22.

determine the date of onset of her depression and, in a subsidiary constellation of errors, failed to enlist the aid of a medical advisor; gave no basis for finding her testimony regarding her depressive symptoms less than credible; failed to complete a Psychiatric Review Technique Form (APRTF<sup>3</sup>) to assess the severity of her mental condition; improperly interpreted raw medical evidence regarding that condition; and reached a conclusion regarding the severity of her depression as of her date last insured that is not substantially supported by the evidence of record. Plaintiff's Itemized Statement of Specific Errors (AStatement of Errors<sup>3</sup>) (Docket No. 5) at 2-12. Inasmuch as I agree that the administrative law judge failed to complete the requisite PRTF, undercutting the substantiality of the evidence supporting his finding of non-severity, I conclude that remand is warranted.

## **I. Analysis**

The plaintiff complains first and foremost that the administrative law judge erred in entirely omitting to apply SSR 83-20 to determine the onset of her depression. *Id.* at 2-9. An onset determination need be made only if the condition at issue has been found to be disabling. *See, e.g.*, SSR 83-20, reprinted in *West's Social Security Reporting Service Rulings 1983-1991*, at 49 (AIn addition to determining that an individual is disabled, the decisionmaker must also establish the onset date of disability.<sup>3</sup>); *Key v. Callahan*, 109 F.3d 270, 274 (6th Cir.1997) (ASince there was no finding that the claimant is disabled as a result of his mental impairment or any other impairments or combination thereof, no inquiry into onset date is required.<sup>3</sup>).

The administrative law judge in this case did find the plaintiff disabled as of January 8, 1997 on the basis of a combination of fibromyalgia, chronic low back pain and a tremor of the right hand, Finding 6, Record p. 21; however, with respect to her claimed depression he halted his analysis at Step 2, finding the condition to be contemporaneously non-severe, Record p. 18 (A[t]he record as a whole . . . does not support a finding that the claimant has a "severe" depressive or anxiety-related disorder.<sup>3</sup>).

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<sup>3</sup>The plaintiff's counsel confirmed at oral argument that she does not contend that the administrative law judge should have established a different onset date for the conditions he did find disabling as of January 8, 1997.

Were this threshold determination supportable, there clearly would have been no need to delve into an onset date. It is not. This is a case in which, although the plaintiff herself omitted mention of a mental condition in reporting her ailments to the Social Security Administration, *see id.* at 96-116 (application), 136-39 (reconsideration report), 142-49 (pain report), 150-54 (function report), 155-58 (statement accompanying hearing request), denied to a consulting physician that she was depressed, *see id.* at 186-87, and had not, at least as of her date last insured, sought treatment for depression, *see, e.g., id.* at 42-43 (hearing testimony), the only relevant medical evidence of record indicates that she suffered from depression, at least as of 1997, *see id.* at 235-37 (report dated October 14, 1997 by Stephanie R. Lash, M.D., to whom the plaintiff was referred for a neurological consultation), 244-45 (report dated December 1, 1997 by William M. DiTullio, Ed.D., a clinical psychologist to whom the plaintiff was referred by her attorney).<sup>4</sup>

An administrative law judge need not complete a PRTF if there is no mental impairment. 20 C.F.R. ' 404.1520a(b)(2). Here, however, the administrative law judge implicitly found (and the record corroborates) that the plaintiff did suffer from a mental impairment, which the administrative law judge determined to be non-severe. Record p. 18. He was in no position to make that determination in the absence of completion of a PRTF. *See* 20 C.F.R. ' ' 404.1520a(b)-(d).<sup>5</sup>

## II. Conclusion

For the foregoing reasons, I recommend that the commissioner's decision be **VACATED** and the cause **REMANDED** for proceedings consistent herewith.

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<sup>4</sup>Dr. Lash, who had been asked by a treating physician to investigate the plaintiff's tremor and muscle aches, stated: "Her tremor does not appear physiologic. I do believe that she is suffering from a mild reactive depression which is likely the cause of a number of her somatic complaints. I would strongly suggest that she be referred for counseling either with a social worker or psychologist." *Id.* at 237. Dr. DiTullio diagnosed the plaintiff as suffering from chronic major depression. *Id.* at 245.

<sup>5</sup>The plaintiff also complains that the administrative law judge failed to marshal the services of a medical advisor. Statement of Errors at 9. Such a consultation appears advisable inasmuch as the record is devoid of any detailed evidence of the kind matching PRTF parameters, *e.g.* "concentration, persistence, or pace" and "deterioration or decompensation in work or work-like settings." *See* 20 C.F.R. ' 404.1520a(b)(3). In addition, were SSR 83-20 found on reexamination to be implicated, the assistance of a medical advisor would be needed to infer onset date. *See* SSR 83-20 at 51 ("At the hearing, the administrative law judge (ALJ) should call on the services of a medical advisor when onset must be inferred.")

**NOTICE**

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated this 16th day of June, 2000.*

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**David M. Cohen**  
**United States Magistrate Judge**

CIVIL DOCKET FOR CASE #: 00-CV-5

ALLEY v. SOCIAL SECURITY, COM  
Assigned to: JUDGE GENE CARTER  
Demand: \$0,000  
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Dkt# in other court: None

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Cause: 42:405 Review of HHS Decision (DIWW)

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